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712

ACT NO. II OF 1900.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd February, 1900.)

An Act to amend the Transfer of Property Act, 1882.

V of 1882.

WHEREAS it is expedient to amend the Transfer of Property Act, 1882; It is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property Act, 1900; and

Short title
and com-
mencement.

(2) It shall come into force at once.

IV of 1882.

2. In section 3 of the Transfer of Property Act, 1882, after the definition of "attached to the earth" the following shall be inserted, namely:—

Addition to
section 3,
Act IV,
1882.

"'Actionable claim' means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

3. In section 6 of the same Act—

(i) in clause (e) the words "for compensation for a fraud or for harm illegally caused" shall be omitted; and

Amendment
of section 6,
Act IV,
1882.

(ii) in clause (h) the words "for an illegal purpose" shall be omitted and instead thereof the words "for an unlawful object or consideration within the meaning of section 23

of

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of the Indian Contract Act, 1872," shall be inserted. IX of 1872.

Substitution of new Chapter for Chapter VIII, Act IV, 1882.

4. For Chapter VIII of the same Act, the following Chapter shall be substituted, namely :—

"CHAPTER VIII.

- "OF TRANSFERS OF ACTIONABLE CLAIMS.

Transfer of actionable claim.

"130. (1) The transfer of an actionable claim shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, and shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not :

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

"131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Notice to be in writing, signed.

"132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Liability of transferee of actionable claim.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

"133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Warranty of solvency of debtor.

"134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery: secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Mortgaged debt.

"135. Every

Transfer of Property. [ACT II, 1900.]

Assignment
of rights
under marine
or fire policy
of insurance.

“135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Incapacity of
officers con-
nected with
Courts of
Justice.

“136. No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive, any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance or at the instance of any person claiming by or through him, any actionable claim so dealt with by him as aforesaid.

Saving of
negotiable
Instruments,
etc.

“137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression ‘mercantile document of title to goods’ includes a bill of lading, dock-warrant, warehouse-keeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

Repeal.

5. So much of the Policies of Insurance (Marine and Fire) Assignment Act, 1866, as is unrepealed, V of 1866. and so much of the Indian Short Titles Act, 1897, as XIV of 1897. relates thereto, are hereby repealed.

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE TRANSFER OF PROPERTY ACT, 1882,

AS MODIFIED UP TO THE 1ST MARCH, 1900.

CALCUTTA :
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA.
1900.

Price Fifteen Annas.

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GOVERNMENT OF INDIA CENTRAL PRINTING OFFICE,
8, HASTINGS STREET.

STATEMENT OF REPEALS AND AMENDMENTS.

S. 1	AMENDED	.	.	.	.	.	.	III OF 1885, s. 1.
S. 3	"	.	.	.	.	.	.	II OF 1900, s. 2.
S. 4	"	.	.	.	.	.	.	III OF 1885, s. 3.
S. 6	"	.	.	.	.	.	.	III OF 1885, s. 4.
S. 6	"	.	.	.	.	.	.	II OF 1900, s. 3.
S. 69	"	.	.	.	.	.	.	III OF 1885, s. 5.
Ch. VIII	SUBSTITUTED	.	.	.	.	.	.	II OF 1900, s. 4.

The following changes have been made in reprinting the Act :—

- (1) amendments have been inserted in their proper places, with explanatory foot-notes :
- (2) references to repealed Acts have been altered as directed by the enactment which effects the repeal, explanatory foot-notes being inserted :
- (3) some further foot-notes have been added for convenience of reference :
- (4) the number and year of Acts referred to in the text have been noted in the inner margin :
- (5) section-numbers occurring in the text have been printed in figures instead of in words :
- (6) the headings to the pages have been amplified.